

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

**MICHAEL ARNEY, and THE
RESIDENTS OF SMITH ACRES
DRIVE, ROYSE CITY, TEXAS,**

Plaintiffs,

V.

Civil Action No. **3:23-CV-0794-L-BK**

**LJA ENGINEERING, PMB CAPITOL
INVESTMENTS, NEW SHERIDON
DEVELOPMENT, UNION MAIN
HOMES, SHADDOCK HOMES,
GRAND HOMES, MICHAEL
TILLOTA, CHRIS MATTEO, LJA
SURVEYING INC, EDGEWATER
FATE HOMEOWNERS' ASSOC.
INC, GM CONSTRUCTION, STEVE
GILBERT, KIMBERLY HORN,**

Defendants.

ORDER

The Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 4) was entered on April 24, 2023, recommending that the Complaint (“Complaint”) (Doc. 3) filed by pro se Plaintiff Michael Arney (“Plaintiff”) and on the behalf of eight residents of Smith Acres Drive, Royse City, Texas, be dismissed without prejudice. In the Complaint, Plaintiff named as defendants various home builders; engineering, investment, surveying, and construction firms; the Edgewater Fate Homeowner’s Association; the City of Fate; Rockwall County; and officials of Fate and Rockwall County. In the Complaint, Plaintiff asserts that his and other residents’ properties are flooded because the adjacent Edgewater housing development built a dam that directs floodwater to the Smith Acres properties. He appears to request that the court enter a temporary restraining order (“TRO”) requiring Defendants to address

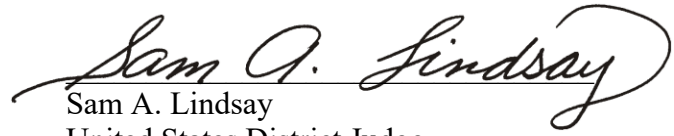
the issue. The Report recommends dismissal without prejudice for lack of subject matter jurisdiction because Plaintiff has not alleged any violation of federal constitution or statute, and, as Plaintiff pleaded that all parties are citizens of Texas, diversity jurisdiction is not present. It also recommends dismissal without prejudice for claims purportedly brought on behalf of the other Smith Acres Drive residents, so that they may file in court if they so desire. Finally, the Report recommends denying Plaintiff leave to file an amended complaint as the Complaint demonstrates a lack of subject matter jurisdiction such that permitting future pleadings would be futile and cause needless delay. Plaintiff did not file objections to the Report, and the time to do has passed.

Having considered the Complaint, Report, file, and record, the court determines that the magistrate judge's finding and conclusions in the Report are correct insofar as it recommends dismissal without prejudice of claims that Plaintiff attempts to bring on behalf of the other residents, and insofar as it determines that Plaintiff failed to show federal subject matter jurisdiction over his claims, and **accepts** them as those of the court. Further, as Plaintiff is not an attorney, he cannot bring claims on behalf of others. Accordingly, the court **dismisses without prejudice** all claims purportedly brought on behalf of other residents of Smith Acres Drive.

As for Plaintiff's individual claims, he does not set forth any factual allegations that present a claim that is properly before this court's limited jurisdiction. Because Plaintiff is proceeding pro se, the court finds that it is in the interests of justice to permit Plaintiff an opportunity to amend his claims to cure the jurisdictional deficiency. Accordingly, the court **grants** Plaintiff leave to file an amended complaint that pleads facts showing that jurisdiction is proper in this court through either federal question or diversity jurisdiction. Plaintiff must file his Amended Complaint **no later than June 22, 2023**. Failure to do so by that date may result in dismissal of this action without

prejudice for lack of subject matter jurisdiction or for failure to comply with a court order. *See* Fed. R. Civ. P. 41(b).

It is so ordered this 23rd day of May, 2023.


Sam A. Lindsay
United States District Judge